

## ANALYSIS OF AMENDED BILL

### Franchise Tax Board

Author: Calderon Analyst: Angela Raygoza Bill Number: AB 1546  
Related Bills: See Legislative History Telephone: 845-7814 Amended Date: March 24, 2008  
Attorney: Patrick Kusiak Sponsor: \_\_\_\_\_

**SUBJECT:** Change LLC Fee Due Date To June 15<sup>th</sup>

### SUMMARY

This bill would require a limited liability company (LLC) to estimate and pay its LLC fee by a specific date of the taxable year.

### SUMMARY OF AMENDMENTS

This bill, as amended, would do the following:

- Require the LLC fee to be estimated and paid prior to the due date of the return
- Assess a penalty for underpayment of the estimated payment of the fee

This is the department's first analysis of this bill.

### PURPOSE OF THE BILL

According to the author's office, the purpose of this bill is to collect the LLC fee that is in a manner similar to other entities that are subject to tax.

### EFFECTIVE/OPERATIVE DATE

This bill would become effective January 1, 2009, and would be operative for taxable years beginning on or after that date.

### POSITION

Pending.

### ANALYSIS

#### FEDERAL/STATE LAW

Federal law lacks provisions that require an LLC to pay an annual tax or fee.

Under current state law, an LLC not classified as a corporation must pay the \$800 annual LLC tax and the annual LLC fee if it is organized, doing business, or registered in California. The annual LLC fee is based on total income from all sources derived from or attributable to this state.

#### Board Position:

\_\_\_\_\_ S \_\_\_\_\_ NA \_\_\_\_\_ NP  
\_\_\_\_\_ SA \_\_\_\_\_ O \_\_\_\_\_ NAR  
\_\_\_\_\_ N \_\_\_\_\_ OUA \_\_\_\_\_ X PENDING

#### Department Director

#### Date

Selvi Stanislaus

4/7/08

The LLC fee is due and payable on or before the 15<sup>th</sup> day of the 4<sup>th</sup> month following the close of the taxable year (e.g. April 15<sup>th</sup> for calendar year taxpayers), and is subject to underpayment penalties, late penalties, and interest.

### THIS BILL

This bill would require an LLC to estimate and pay its LLC fee by the 15<sup>th</sup> day of the 6<sup>th</sup> month of the taxable year (e.g. June 15<sup>th</sup> for calendar year taxpayers).

In addition, this bill would impose a 50% penalty where an LLC underpays the estimated fee payment under certain circumstances. The underpayment penalty would not be imposed where the fee payment for a taxable year is greater than or equal to the LLC's prior year fee liability.

### TECHNICAL CONSIDERATIONS

Amendments 1-3 have been provided to correct technical errors.

### **OTHER STATES' INFORMATION**

The states surveyed include *Florida, Illinois, Massachusetts, Michigan, Minnesota, and New York*. These states were selected due to their similarities to California's economy, business entity types, and tax laws.

*Florida, Illinois, Massachusetts, and Michigan* lack provisions requiring an LLC to pay an annual fee.

*Minnesota* requires a limited liability partnership and an LLC treated as a partnership to pay an annual entity level fee that ranges from \$0 to \$5,000. The fee is based on the sum of an entity's *Minnesota* property, payroll, and sales.

*New York* requires every domestic and foreign LLC that is treated as a partnership and has any income, gain, loss, or deduction from *New York* sources to pay an annual filing fee. The amount of the filing fee is \$50 multiplied by the total number of members in the LLC. The minimum fee an LLC must pay is \$325 and the maximum fee is \$10,000, annually. Members include resident and nonresident individuals, estates and trusts, corporations, or other LLCs or partnerships.

### **FISCAL IMPACT**

The department's costs to administer this bill are estimated at approximately \$290,000 in the first year and approximately \$72,000 in each year thereafter.

## ECONOMIC IMPACT

### Revenue Estimate

The revenue for this bill is as follows:

Revenue Analysis for LLC Fee Due Payment Due Date Change As Proposed February 8, 2008 Effective for Tax Year BOA January 1, 2009 (\$ in Millions)				
Fiscal Year	2007-08	2008-09	2009-10	2010-11
LLC Fee Payment Due Date	-0-	+ \$360	+ \$35	+ \$40

### Revenue Discussion

The revenue impact of this bill depends on the amount of LLC fees paid that would be accelerated into an earlier fiscal year. In 2005, LLC fees were \$285 million. Based on historical growth patterns and adjusting for the drop in revenue from the passage of AB 198, the amount of LLC fees will have grown to approximately \$370 million in 2009.

Based on taxpayer filing behavior, over 95% of LLCs file on a calendar year basis. It is estimated that the entire amount of 2009 LLC fees would be paid by the second estimated payment due in June. This would accelerate the LLC fee revenue from April of 2010 into June of 2009. There is no change for the LLC fee for 2008 to be paid with the LLC's 2008 taxable year return. The difference between current law and proposed law for 2008-09 is the \$360 million of 2009 LLC payments that would be accelerated from return payments to the second estimated payment of the current taxable year. In subsequent years, there would be continued net acceleration of revenue based on the growth in the amount of LLC fees.

## LEGISLATIVE STAFF CONTACT

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FRANCHISE TAX BOARD'S  
PROPOSED AMENDMENTS TO AB 1546  
As Amended March 24, 2008

AMENDMENT 1

On page 4, after line 20 insert:

(c) The fee assessed under this section shall be due and payable on the date the return of the limited liability company is required to be filed under Section 18633.5, shall be collected and refunded in the same manner as the taxes imposed by this part, and shall be subject to interest and applicable penalties.

AMENDMENT 2

On page 4, line 26 strike "(c)" and add:

(d)

AMENDMENT 3

On page 4, strike lines 38-40